

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>TAMMI WHEELER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 247,943
<b>SHAY PRODUCTIONS</b>	)	
<b>PREFERRED SIDING &amp; IMPROVEMENTS</b>	)	
Respondent	)	
AND	)	
	)	
<b>UNINSURED</b>	)	
<b>AMERICAN FAMILY MUTUAL INSURANCE CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed the April 16, 2001, Award of Administrative Law Judge Jon L. Frobish. The Administrative Law Judge found that claimant was an independent contractor of Preferred Siding & Improvements. Claimant, however, was granted an award against Shay Productions for a portion of her permanent disability after the Administrative Law Judge found that claimant was an employee of Shay Productions, although engaged in multiple employments, performing the same or similar work. The Administrative Law Judge then apportioned the amount of compensation payable under K.S.A. 44-503a (Furse 1993). The Board held oral argument on October 12, 2001.

**APPEARANCES**

Claimant appeared by her attorney, Stephen J. Jones of Wichita, Kansas. Respondent Shay Productions, an uninsured respondent, appeared not. Respondent Preferred Siding & Improvements and its insurance carrier, American Family Mutual Insurance Company, appeared by their attorney, William L. Townsley, III, of Wichita, Kansas.

The Workers Compensation Fund was originally impleaded in this matter when claimant discovered that respondent Shay was uninsured. However, when respondent Shay entered its appearance and began paying benefits, the Fund was dismissed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

At regular hearing, claimant appeared and was represented by counsel, respondent Shay Productions, an uninsured respondent, appeared and was represented by counsel, and respondent Preferred Siding & Improvement and its insurance carrier, American Family Mutual Insurance Company, were represented by counsel. Respondent Shay Productions, although uninsured, participated in the litigation of this matter and was providing benefits to claimant.

However, by the time oral argument was presented to the Board, counsel for claimant and respondent Preferred Siding & Improvement and its insurance company acknowledged that Shay Productions was no longer participating or providing benefits. Additionally, claimant's counsel advised that Shay Productions could not be located and the attorney for Shay Productions had filed a motion to withdraw from representation of Shay Productions. However, no motion to withdraw is in the administrative file nor is there an order on that motion. Shay Productions did not appear and was unrepresented at the oral argument before the Board.

K.S.A. 44-532a(a) (Furse 1993) allows application to the Director for inclusion in the litigation of the Kansas Workers Compensation Fund where:

. . . such employer is financially unable to pay compensation to an injured worker as required by the workers compensation act, or such employer cannot be located and required to pay such compensation, the injured worker may apply to the director for an award of the compensation benefits, including medical compensation, to which such injured worker is entitled, to be paid from the workers compensation fund.

The Kansas Workers Compensation Fund was a party to this matter, but was dismissed on January 20, 2000, after counsel for respondent Shay Productions entered his appearance and became actively involved in the litigation, and respondent began providing benefits to claimant. That situation, however, has changed.

K.S.A. 44-532a(a) (Furse 1993) goes on to state:

Whenever a worker files an application under this section, the matter shall be assigned to an administrative law judge for hearing. If the administrative law judge is satisfied as to the existence of the conditions prescribed by this section, the administrative law judge may make an award, **or modify an existing award**, and prescribe the payments to be made from the workers compensation fund as provided in K.S.A. 44-569 and amendments thereto. (Emphasis added.)

It has been represented to the Board by the attorney for claimant and the attorney for Preferred Siding & Improvements that respondent, Shay Productions, is no longer actively involved in the litigation and is not currently locatable. Additionally, it is represented that no

benefits are being provided to claimant from Shay Productions, and it is presumed that Shay Productions is no longer financially able to pay the compensation awarded.

Therefore, claimant and respondent Preferred Siding have requested that this matter be remanded to the Administrative Law Judge for a hearing pursuant to K.S.A. 44-532a (Furse 1993) regarding how to proceed on claimant's post-award impleading of the Fund, the inclusion of the Fund in the litigation and, if appropriate, the reopening of the record.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that this matter be remanded to the Administrative Law Judge for a hearing pursuant to K.S.A. 44-532a (Furse 1993) for consideration of the above listed issues.

The Appeals Board does not retain jurisdiction over this matter. Any disputes regarding future decisions or orders of the Administrative Law Judge will require that the appropriate appeal pursuant to K.S.A. 44-551 be filed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November, 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Ray Kangro, Shay Productions, 4301 Main Street, Kansas City, MO 64111  
Stephen J. Jones, Attorney for Claimant  
Warren R. Southard, Attorney for Respondent Shay Productions  
William L. Townsley, III, Attorney for Respondent Preferred Siding  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director